

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID SCHLOSSER,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

CASE NO. 2:22-CV-1112-RJB-DWC

ORDER REGARDING NEWLY
ASSERTED CLAIM

The District Court has referred this action to United States Magistrate Judge David W. Christel. This matter is before the Court on the District Court's Order re-referring case. Dkt. 32.

The District Court observed Petitioner's objections to the Report and Recommendation ("R&R") in this matter appear to assert for the first time a claim under Ground 2 that the trial court improperly limited questioning of the victim's mental health counselor. *Id.* The District Court noted this portion of Ground 2 was not asserted in the Petition. *Id.*; *see also* Dkt. 3 at 18 (Ground 2 of the Petition, addressing only limitations on cross-examination of the victim). The District Court noted it is unclear whether Petitioner exhausted this newly stated portion of Ground 2 in the state courts or whether he is now procedurally barred from doing so. *Id.*

1 If Petitioner wishes to include this new claim in this matter, he must file a motion to
2 amend the original Petition. Petitioner shall file any such motion on or before August 28, 2023,
3 and the motion shall: (1) attach a proposed amended Petition in accordance with LCR 15; (2)
4 explain why the new portion of Ground 2 is not unexhausted or procedurally defaulted; (3)
5 address whether the amendment may relate back to the filing of the original Petition in this
6 matter; and (4) address whether an amendment would render the Petition a “mixed Petition.” The
7 motion shall be noted and briefed in accordance with LCR 7(d)(3).

8 The Court also notes attorney Jason B. Saunders appeared as counsel for Petitioner on
9 June 1, 2023 and filed objections to the R & R on Petitioner’s behalf. Dkts. 29, 30. Counsel’s
10 notice of appearance purported to limit his appearance to the objections. Dkt. 29. However, this
11 Court’s Local Rules do not provide for a limited appearance. The Clerk is directed to correct the
12 docket to indicate that Petitioner is represented by Mr. Saunders. If counsel wishes to terminate
13 his appearance, he shall file a motion to withdraw.

14 The Clerk is directed to send a copy of this Order to Petitioner and counsel of record for
15 Petitioner and Respondent.

16 Dated this 27th day of July, 2023.

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19 David W. Christel
20 Chief United States Magistrate Judge
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